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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

In re M.H. et al., Persons Coming Under  
the Juvenile Court Law.

FRESNO COUNTY DEPARTMENT OF  
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

D.H.,

Defendant and Appellant.

F082334

(Super. Ct. Nos. 15CEJ300007-1,  
15CEJ300007-2 & 15CEJ300007-3)

**OPINION**

**THE COURT\***

APPEAL from an order of the Superior Court of Fresno County. Gary L. Green,  
Commissioner.

John L. Dodd, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Daniel C. Cederborg, County Counsel, and Lisa R. Flores, Deputy County  
Counsel, for Plaintiff and Respondent.

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\* Before Smith, Acting P.J., Meehan, J. and De Santos, J.

In this juvenile dependency case, D.H. (mother) appeals the juvenile court's dispositional order as to her children, then 10-year-old M.D.H., Jr., then nine-year-old M.D.K.H., and then seven-year-old M.D.H. (collectively, the children), contending insufficient evidence supported the juvenile court's finding the Indian Child Welfare Act of 1978 (ICWA; 25 U.S.C. § 1901 et seq.) did not apply to the proceedings because the Fresno County Department of Social Services (department) failed to comply with its duty of inquiry. The department concedes error and that limited remand is necessary. We agree with the parties and remand for proceedings to ensure ICWA compliance.

### **FACTUAL AND PROCEDURAL BACKGROUND**<sup>1</sup>

On February 20, 2020, the department filed a petition on behalf of the children, alleging they came within the juvenile court's jurisdiction under section 300, subdivision (b)(1). Specifically, the petition alleged the children had suffered or were at substantial risk of suffering serious physical harm because mother could not adequately supervise the children due to mental health issues.<sup>2</sup>

The department's detention report dated February 25, 2020, indicated the department had not made any ICWA inquiry but noted that "on June 9, 2015, ICWA was found not applicable in [mother] and [father]'s previous [juvenile dependency] case."<sup>3</sup>

At a settlement conference on October 6, 2020, the juvenile court asked mother if she had any heritage with a federally recognized Indian tribe. Mother responded that her

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<sup>1</sup> As the sole issue on appeal concerns ICWA compliance, we only briefly discuss the underlying circumstances of the dependency proceedings.

<sup>2</sup> A second amended petition further alleged the children were at substantial risk of being sexually abused by mother based on an allegation mother made one of the children watch pornography, but at the jurisdictional/dispositional hearing, the juvenile court found the department had not met its burden to prove these allegations.

<sup>3</sup> All three children were adjudged dependents of the court in a previous dependency case. It involved allegations the parents medically neglected M.D.H. by failing to obtain medically recommended treatment. Dependency was eventually terminated, with mother being granted sole legal and sole physical custody of the children.

children had “Native blood lines” through the “Pequi” tribe. Counsel for the department indicated to the court the department would follow up on mother’s claim.

Social worker Amanda Ford prepared a “NOTICE OF CHILD CUSTODY PROCEEDING FOR INDIAN CHILD” (ICWA-030) form. Under the section for the children’s biographical information, the form stated as to mother, that a department “ICWA Liaison” made several attempts to contact mother that went unanswered. The form further indicated: “This notice contains some information from a previous Juvenile Dependency case however, the remaining will be no information available.” As for father, it stated that father’s whereabouts were unknown and the department had no contact information and no paternal relatives “have come forward.” The form further stated: “[T]his notice will go out with no information available. Some information generated on this notice was from a previous Juvenile Dependency case.” Very little information was included on the form, and no tribe was indicated. The form was mailed to the Bureau of Indian Affairs on November 6, 2020. It was mailed to no tribes.

The U.S. Department of the Interior subsequently sent a letter to the department stating: “The notice [ICWA-030 form] contains insufficient information to determine Tribal affiliation (25 C.F.R. § 23.11 (d)) When additional information becomes available, please forward the Notice to the appropriate Tribe(s) using the latest ICWA Designated Tribal Agents List.”

At the contested combined jurisdictional/dispositional hearing held on December 15, 2020, the juvenile court found the children came within its jurisdiction under section 300, subdivision (b)(1). The court removed the children from mother’s custody, and ordered her to receive reunification services. The court found the children did not come within the provisions of ICWA.

### **DISCUSSION**

Mother contends insufficient evidence supported the juvenile court’s finding ICWA was not applicable to the proceedings because the department failed to adequately

discharge its duty of inquiry. The department concedes error and agrees with mother a limited remand is appropriate to ensure ICWA compliance. We accept respondent's concession.

Mother's disclosure the children had "Native blood lines" through the "Pequi" tribe gave the department and court "reason to believe" the children were Indian children within the meaning of ICWA,<sup>4</sup> triggering the department's duty of "further inquiry" under ICWA. (See *In re T.G.* (2020) 58 Cal.App.5th 275, 292; *In re D.S.* (2020) 46 Cal.App.5th 1041, 1052; see also Welf. & Inst. Code,<sup>5</sup> § 224.2, subd. (e)(1).) A previous finding ICWA did not apply to proceedings involving the family did not relieve the department of its duty, as the juvenile court and the department "have an affirmative and continuing duty to inquire whether a child," who is the subject of a juvenile dependency petition, "is or may be an Indian child" within the meaning of ICWA. (§ 224.2, subd. (a); see *In re Isaiah W.* (2016) 1 Cal.5th 1, 9; Cal. Rules of Court, rule 5.481(a).)

Because the duty of "further inquiry" was triggered, the department was required to follow the provisions set forth in sections 224.2 and 224.3. "Further inquiry" includes interviewing the parents, Indian custodian, and extended family members to gather available familial and tribal enrollment information. (§§ 224.2, subd. (e)(2)(A); 224.3, subd. (a)(5).) The department "has the obligation to make a meaningful effort to locate and interview extended family members to obtain whatever information they may have as to the child's possible Indian status." (*In re K.R.* (2018) 20 Cal.App.5th 701,

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<sup>4</sup> An "Indian child" is defined in ICWA as an unmarried individual under 18 years of age who is either (1) a member of a federally recognized Indian tribe, or (2) is eligible for membership in a federally recognized tribe and is the biological child of a member of a federally recognized tribe. (25 U.S.C. § 1903(4) & (8); see § 224.1, subd. (a) [adopting federal definitions].)

<sup>5</sup> Further undesignated statutory references are to the Welfare and Institutions Code.

709.) While interviewing parents and extended family members, the department is to gather the following information:

“(A) The name, birth date, and birthplace of the Indian child, if known[;]

“(B) The name of the Indian tribe in which the child is a member, or may be eligible for membership, if known[; and]

“(C) All names known of the Indian child’s biological parents, grandparents, and great-grandparents, or Indian custodians, including maiden, married, and former names or aliases, as well as their current and former addresses, birth dates, places of birth and death, tribal enrollment information of other direct lineal ancestors of the child, and any other identifying information, if known.” (§ 224.3, subd. (a)(5); see § 224.2, subd. (e)(2)(A).)

“Further inquiry” includes contacting the Bureau of Indian Affairs and State Department of Social Services for assistance with identifying tribes in which the child may be a member of or eligible for membership. (§ 224.2, subd. (e)(2)(B).)

Finally, “further inquiry” also includes contacting tribes the child may be affiliated with, and anyone else, that might have information regarding the child’s membership or eligibility in a tribe. (§ 224.2, subd. (e)(2)(C).) “Contact with a tribe” for the purpose of the department’s duty of further inquiry “shall, at a minimum, include telephone, facsimile, or electronic mail contact to each tribe’s designated agent for receipt of notices under [ICWA]” and “include sharing information identified by the tribe as necessary for the tribe to make a membership or eligibility determination, as well as information on the current status of the child and the case.” (*Ibid.*)

Here, the department did not make an adequate effort to locate and interview the parents, extended family members, or others who may have had information regarding the children’s statuses as Indian children nor gather all information enumerated in section 224.3, subdivision (a)(5) that was available. Though the department indicated on the ICWA-030 form it was unable to obtain the information from the parents or other

family members, the record demonstrates the department had contact with mother and other paternal and maternal relatives throughout the proceedings. The department should have, at a minimum, inquired of these relatives as to the children's potential status as Indian children and attempted to gather all required information. Further, the department did not contact any tribe with which the children may have been affiliated<sup>6</sup> or share whatever information the tribe or tribes deemed relevant to determine the children's status as Indian children pursuant to section 224.2, subdivision (e)(2)(C). For these reasons, we conclude the department did not adequately discharge its duty of "further inquiry," and as such, the juvenile court's finding ICWA was inapplicable was not supported by sufficient evidence.

Limited remand is necessary for the department to adequately discharge its duty of further inquiry under sections 224.2 and 224.3 including, but not limited to, properly investigating the children's possible statuses as Indian children by interviewing the parents and locating and interviewing family members to gather all available required information, and contacting any tribes with which the children may have been affiliated to share whatever information deemed necessary by those tribes to make a determination of the children's potential status as Indian children.

### **DISPOSITION**

The juvenile court's finding that ICWA does not apply is conditionally reversed and the matter is remanded to the juvenile court with directions to order the department to comply with the inquiry provisions set forth in sections 224.2 and 224.3. If, after the court finds adequate inquiry has been made consistent with the reasoning in this opinion,

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<sup>6</sup> As mother points out, there does not appear to be a federally recognized tribe by the name of "Pequi." (86 Fed. Reg. 7554 (Jan. 29, 2021).) There is, however, a federally recognized tribe by the name of "Mashantucket Pequot Indian Tribe." (*Ibid.*) The department's duty included investigating mother's claim to determine if she was referring to a federally recognized tribe.

the court finds ICWA applies, the court shall vacate its existing order and proceed in compliance with ICWA and related California law. If the court finds ICWA does not apply, the finding that ICWA does not apply to the case shall be reinstated.

In all other respects, the juvenile court's dispositional findings and orders are affirmed.